

CHAPTER II

ORGANIZATION OF OFFICE, SALARY AND EXPENSES, AND FEES

OFFICE CREATED

The office of the clerk of the circuit court is a constitutional office. The constitution of Indiana and Indiana Statutory law provide for the election of clerk of the circuit court in each county of the state at the time of the holding of a general election. Art. 6, Sec. 2, Ind. Const. [IC 33-32-2-2]

TERM OF OFFICE

The term of office is fixed at four years and no person is eligible to serve as clerk more than eight years in any period of twelve. Art. 6, Sec. 2, Ind. Const.

QUALIFICATIONS

No person shall be elected or appointed as a clerk of the circuit court who is not an elector of the county, nor who has not been an inhabitant thereof, during one year next preceding the appointment. Art. 6, Sec. 4, Ind. Const.

Each clerk must reside within the respective county and shall keep the perspective office at such place therein, and perform such duties, as may be directed by law. Art. 6, Sec. 6, Ind. Const.

An indispensable qualification to hold any office within the state, either by election or appointment, is that such person shall never have evaded, or have been convicted of evading, the Selective Service Act of the United States, or of any conspiracy or attempt to defraud the government of the United States, or of any seditious utterances in violation of any of the laws of the United States or of any other crime against the laws of the United States where the sentence imposed therefor exceeded six (6) months. [IC 5-8-3-1]

OATH

Every clerk of the circuit court before entering upon the official duties, shall take an oath to support the constitution of the United States and of this state, and that the clerk will faithfully discharge the duties of such office. An individual appointed as a deputy is considered an employee of the political subdivision performing ministerial functions on behalf of an officer and is not required to take oath. However, if a chief deputy assumes the duties of an office during a vacancy under IC 3-13-11-12, the chief deputy must take the oath of office before entering on the official duties of the office. [IC 5-4-1-1] [IC 36-2-16-2]

ENDORSEMENT

Such oath shall be endorsed on or attached to the commission or certificate, and signed by him/her, and certified to by the officer before whom the same was taken, who shall also deliver to such person a copy of the same. [IC 5-4-1-2]

SURETIES

The bond shall be executed by the principal and one or more freehold sureties. [IC 5-4-1-13] In the event a corporate surety bond is furnished, a freehold surety, or sureties, is not required.

BOND

The clerk is required to give a bond conditioned for the faithful discharge and performance of the clerk's duty. The bond must be given before the commencement of the clerk's term of office. If the clerk fails to give the bond before that time, the clerk may not take office. All official bonds shall be payable to the state of Indiana and shall be obligatory to such state, upon the principal and sureties, for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof. [IC 5-4-1-9, 10]

County council may, by ordinance, authorize a blanket bond or crime insurance policy for clerks of the circuit court in lieu of an individual surety bond. [IC 5-4-1-18]

AMOUNT OF BOND AND APPROVAL

The fiscal body (county council) shall fix the amount of the bond of the clerk of the circuit court in an amount equal to fifteen thousand (\$15,000.00) for each one million dollars (\$1,000,000.00) of receipts of the clerk's office during the last complete fiscal year before the purchase of the bond. The amount of the bond may not be less than fifteen thousand (\$15,000.00) nor more than three hundred thousand dollars (\$300,000.00). [IC 5-4-1-18] The bond of the clerk shall be approved by at least a majority of the board of county commissioners. (In Marion County, only, by the mayor of the consolidated City of Indianapolis.)

No bond shall be filed until lawfully approved. The official bond shall be approved by at least a majority of the board of county commissioners. The approval must be endorsed on the bond by the commissioners, or a majority of them. [IC 5-4-1-8]

WHERE FILED

The official bonds of the clerks of the circuit courts shall be filed and recorded in the recorder's office of their respective counties. [IC 5-4-1-5.1]

COST OF BOND

The cost of the bond of the clerk of the circuit court or employee shall be paid out of the general fund of the county. [IC 5-4-5-2]

OFFICE HOURS AND PLACE

The clerk shall keep the office open at the county seat in a building provided for that purpose by the county board of commissioners, every day of the year except on Sundays and legal holidays. [IC 33-17-1-5]

However, clerks may close their offices on those days the judge of the circuit court of their county orders the court closed in accordance with the custom and practice of the county.

Any legal action required to be taken in the office of the clerk of the circuit court during the time the office is closed, under this section, may be taken on the next following day the office is open.

The clerk shall keep the office open on those days and at those times that are necessary for the proper administration of the election statutes. [IC 33-32-2-4]

APPOINTMENT OF DEPUTIES

Clerks may appoint such number of full or part time deputies and other assistants as may, in the judgment of the clerk, be necessary for the proper discharge of the duties imposed by law upon the clerk.

The number of such deputies and other assistants, either full or part time, shall be subject to the approval of the county council.

QUALIFICATION OF DEPUTY

Article 6, Section 4 of the Constitution of the State of Indiana prohibits the appointment of any person as a county officer who is not an elector of the county; nor any one who shall not have been an inhabitant of the county during one year next preceding the appointment.

Generally speaking, a "deputy" is "one appointed as the substitute of another, and empowered to act for him, in his name or in his behalf, called a general deputy when appointed to exercise the whole of the powers of another official, and a special deputy when appointed to exercise some special function of it." (O.A.G. July 14, 1931)

A deputy clerk of the circuit court in this state is a public official. Deputies are authorized to administer an oath either in the name of the principal or in his or her own name as such deputy. It is the better practice for the deputy to act in the name of his principal. (O.A.G. 4, 1952)

In the case of *Wells v. State ex rel Peden*, 175 Ind. 380, at page 385, the court said:

"A deputy auditor under the statute is more than a clerk or employee; he is vested with the power by express statute, to perform all duties of the auditor, and public policy requires that this should be so. He is essentially a public officer and discharges functions of government, under express statutory direction."

The court further held on page 384 of the same case, citing numerous authorities, "persons who are appointed deputies under a statute are public officers."

See Also:

Southern Surety Company v. Kenney, 74 Ind., App. 205, page 213.

Applegate, County Auditor v. State ex rel Pettijohn, 205 Ind. 122 at page 125.

All the opinions and cases we have found indicate that a deputy clerk of the circuit court must have the same qualifications as the clerk, to-wit: He or she must be an elector of the county and have been an inhabitant thereof during one year next preceding his appointment.

FIRST OR CHIEF DEPUTY

In each county the clerk is entitled to appoint one first or chief deputy without the approval of the board of county commissioners.

If a county has a superior or county court or two or more court houses in which branches of county offices are maintained, the deputies in charge of the branches shall rank as first or chief deputies and shall receive compensation as such. [IC 36-2-16-9]

BONDS OF DEPUTIES

Although deputies are not required by law to be bonded, the county council may cause deputies and employees to be bonded by either individual or blanket bonds to cover the proper discharge of duties. [IC 36-2-16-2]

SALARIES

Before July 2 of each year the clerk shall file a statement with the county auditor (Form 144) that shows in detail the positions and the rate of compensation proposed for the clerk and for each full-time or part-time position. The county auditor is required to submit the statements (Forms 144) to the board of county commissioners at their July meeting for their review and recommendations to the county council. [IC 36-2-5-4] The county council shall fix the number of deputies and other employees and the compensation of the clerk, deputies and other employees. [IC 36-2-5-3]

The annual salaries shall be in full for all services and in lieu of all fees, per diems, penalties, interest, costs, forfeitures, commissions, percentages, allowances, mileage and other remuneration whatsoever for official services or involving official authority [IC 36-2-7-2], except that the clerk as the secretary of the county election board may receive compensation as is provided for by the county council [IC 3-6-5-9].

BUDGET ESTIMATES

It is the duty of the clerk to prepare an estimate of the amount of money required for his or her office for the ensuing calendar year. The budget should be itemized with as great particularity as possible and must be prepared on the prescribed County Budget Form Number 1 which is furnished by the county auditor. The estimate should include every item that will be needed or which is proposed to be bought during the following year and such items must be listed under the proper budgetary classifications. The estimated budget must be prepared and presented to county auditor on or before the Wednesday following the first Monday in August. [IC 36-2-5-6] No expenditures may be made unless the money has been appropriated.

MILEAGE

The clerk is entitled to a sum for mileage in the performance of official duties in an amount determined by the county council. [IC 36-2-7-3]

PURCHASES

The board of county commissioners is the purchasing agency for the county. As such, they may establish written policies for purchases made by the purchasing agency. The written policies may apply to all purchases generally or to a specific purchase. The purchasing agency may authorize other individuals to purchase for the county by designating these individuals purchasing agents.

Purchasing agents are to follow the requirements for sealed competitive bidding in making purchases of greater than \$75,000. They must accept written quotes for purchases of at least \$25,000 but not more than \$75,000. Both of these purchasing methods are explained in detail in Chapter 15 and IC 5-22.

In making purchases of less than \$25,000, the purchasing agent must follow the purchase policies established by the purchasing agency. [IC 5-22]

POSTAGE - CLAIM FOR PURCHASES

Clerks should anticipate their needs and file a claim with the county auditor when postage is required for the conduct of official business. The claim should be itemized as to the denomination of stamps and the amount for which the auditor should draw his warrant payable to the postmaster.

The clerk should then purchase the stamps, have the postmaster return a receipt for the amount and return the receipt to the auditor to be filed with the claim for postage that he or she was advanced.

The clerk should not use money from current receipts or from the cash change fund for the purchase of stamps and hold the postmaster's receipt in lieu of cash until the auditor reimburses the clerk.

RECORD OF HOURS WORKED

IC 5-11-9-4 states that records shall be maintained to show which hours were worked each day of officials and employees of any political subdivision of the state.

The requirement can be met by preparing an endorsement on the payroll claim form showing the general work schedule and listing the specific employees who worked hours different from that general work schedule.

Another alternative is to add a statement on each Employee's Service Record, General Form 99A (1985), and/or Employee's Earnings Record, General Form 99B (1985), indicating hours to be worked daily by that individual.

FEES - COSTS - PER DIEMS TO BE PAID TO COUNTY GENERAL FUND

The clerk shall continue to collect, account for and pay into the county general fund all fees, costs, per diems, penalties, commissions, percentages and any other remuneration of whatever kind or character for official services or involving official authority that were previously retained by the clerk as a part of his compensation.

This includes: Change of venue transcript fees, clerk's service fees, per diem and the certificate of order book entry and allowance; for issuing and recording such transcript of unpaid costs in venued actions; fish and game license fees, gross income and employment security warrant fees, birth certificate fees, naturalization and passport fees; and the fees for issuing fee bills for the collection of unpaid court costs.

The Supreme Court has held the clerk of the circuit court to be a circuit officer rather than a county officer. The Attorney General, in Official Opinion No. 49, 1959, held that it was the legislative intent to include the clerk under the provisions of IC 36-2-7-3, insofar as mileage is allowed for duties performed by the clerk as a member of the county election board. The Attorney General concluded that the clerk is entitled to mileage when acting as a member of the county election board.

Also, the clerk, as a member of the county election board, may receive a per diem of \$24.00 per day, reimbursement of the registration fee, an allowance for lodging for each night preceding conference attendance equal to the lodging allowance paid to state employees, and mileage at the state rate for the distance necessarily traveled in going to and returning from the place of an instruction meeting called by the state election board. The clerk shall attend such meetings. [IC 3-6-4.2-14]

The clerk is entitled to collect two dollars (\$2) from the county treasury for each calendar day on which the clerk or the clerk's deputy attend a court when it is occupied with business concerning change of venue. The payment is not affected by the number of items filed or the business transactions by the court on that day. [IC 34-35-5-8]

OFFICIAL COURT SEAL

The circuit court of each county shall have a seal, a description of which, signed by the judge devising same, shall be filed by the clerk and recorder.

SPECIAL MEETINGS OF BOARD OF COUNTY COMMISSIONERS

If the public interest requires a special meeting of the executive (county commissioners), such meeting may be called by a member of the executive or by: (1) the county auditor; (2) the county clerk, if the office of county auditor is vacant; or (3) the county recorder, if the offices of county auditor and county clerk are both vacant. [IC 36-2-2-8]

LUCRATIVE OFFICE

"No person holding a lucrative office or appointment under the United States or under this state shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted; . . ." (Art. 2, Sec. 9, Ind. Const.)

No person holding any lucrative office or appointment under the United States or under this State, and prohibited by the Constitution of this state from holding more than one such lucrative office, shall serve as a notary public. [IC 33-42-2-7]

A clerk of the circuit court holds a lucrative office. The clerk of the circuit court can not hold another lucrative office simultaneously with their election nor can the clerk act as a notary public while holding their office. It has been held that the acceptance of a lucrative office while holding another automatically vacates the former.

CONFLICT OF INTEREST

IC 35-44-1-3 outlines certain conditions under which public servants may or may not have pecuniary interest in or derive profits from a contract or purchase connected with an action by the governmental entity that he or she serves.

This statute requires that a written disclosure describing the contract and the financial interest that the public servant has in the contract be filed within fifteen (15) days after the final action on the contract or purchase with the State Board of Accounts and the clerk of the circuit court. It is recommended that a paper or electronic record be used to record the written disclosures filed with the clerk.

COUNTY BOARD OF ELECTIONS

As secretary to the county election board, the clerk must annually prepare a budget estimate itemized for the amount of money necessary to be appropriated for the conduct of elections for the ensuing year. The estimate shall be submitted at the time and in the manner and form other county budget estimates are required to be filed. [IC 3-6-5-16] The form of estimate will be furnished by the county auditor and will be County Budget Form Number 1.

The county election board is authorized to appoint necessary clerical assistants, custodians and other employees as may be necessary. The board may determine the duties, rank and salaries of its appointees. [IC 3-6-5-23]

All materials, supplies and equipment which are to be paid for out of the county treasury shall be purchased by the board of elections in the manner required by law. Payment of such claims shall be filed with and approved by the county election board and the county auditor shall draw his warrant on the county treasurer in payment thereof after allowance by the board of commissioners.

Each county election board shall submit a report to the State Election Board after each municipal and general election describing the activities of the board during the previous year. The board shall include the following in the report: Information relating to the expenses of office maintenance and elections within the county or political subdivisions within the county, a copy of the statement of the county canvassing board containing the votes cast for each candidate in each precinct at the last election, and any additional information relating to elections that the State Election Board prescribed.

INSTRUCTION FOR COUNTY ELECTION BOARDS

The Indiana Election Division of the Secretary of State's Office shall call a meeting of the county election boards and the boards of registration to instruct them as to their duties, each year in which a general or municipal election is held. The division shall set the time and place of the instructional meeting and the meeting may not last more than two (2) days.

In years in which a primary election is held, the Election Division may conduct the meeting before the first day of the year and shall conduct the meeting before primary election day. Each circuit court clerk shall attend the meeting. [IC 3-6-4.2-14]

COMPENSATION FOR ATTENDANCE AT MEETING

Each member of a county election board or board of registration shall be entitled to collect a per diem of twenty-four dollars (\$24.00) per day, a mileage allowance at the prevailing state rate for the distance necessarily traveled in going to and returning from the place of the instruction meeting, reimbursement for the payment of the instructional meeting registration fee and an allowance for lodging for each night preceding conference attendance equal to the lodging allowance provided to state employees from the county general fund without appropriation. [IC 3-6-4.2-14]

REGISTRATION OF VOTERS

In counties containing a population of 125,000 or less the clerk of the circuit court is registration officer and shall supervise the registration of voters within the county. [IC 3-7-12-1] At the time of preparing other budget estimates the clerk in counties containing a population of 125,000 or less will prepare an estimate for the amount of money necessary to be appropriated for the expense of registration of voters for the ensuing year. The form of estimate will be furnished by the county auditor and will be County Budget Form Number 1.

By the terms of the General Election Code, IC 3-5, creating county boards of election and providing for the registration of voters, it is deemed necessary and desirable that the budget estimates and appropriations for the expense of elections and registration of voters should be separated from the county commissioner's budget estimates. All items of expense for elections and registration of voters have been eliminated from the county commissioners' budget estimate and are now separate estimates to be prepared by the clerk and the voters registration board.

DEPUTY CLERK NOT ENTITLED TO ADDITIONAL COMPENSATION

A deputy clerk, as registration officer, is not entitled to be compensated. If a deputy clerk serves as a deputy registration officer, when properly appointed, the deputy may not be additionally compensated for such services as a deputy registration officer. (O.A.G. 15, 1962)

Deputy clerks of the circuit courts shall not by reason of their office be registration officers or have authority to register voters. They may only become such deputy registration officers upon appointment under the same recommendations as required for the appointment of deputy registration officers.

A duly appointed and acting deputy clerk may take and acknowledge voters registration blanks in the name of the clerk of the circuit court the same as if performing other official duties for and in behalf of such clerk.

Deputy clerks cannot receive compensation in addition to their regular salaries for maintaining voters registration lists.

CLERICAL ASSISTANTS TO BOARD OF ELECTIONS AND CANVASSERS

County election boards and county boards of canvassers are authorized to employ such clerical assistants as is necessary in the execution of their powers and the proper canvassing and tabulation of the vote. [IC 3-6-5-23; 3-12-4-4]

The county election board may fix the salaries and other necessary compensation of its appointees. The board of canvassers is likewise authorized to employ clerical assistants and fix reasonable rates of compensation.

It was held by the Attorney General in O.A.G. 1936, Page 370, that deputy clerks or employees in the office of the clerk employed by the board of elections are entitled to be compensated for such services in addition to the salaries received in the performance of their official duties as deputies or employees of the clerk's office. The Attorney General suggested if any such deputy or employee of the clerk's office neglected his official duties as such deputy or employee, the remedy would be to discharge the deputy or other employee.

ANNUAL CONFERENCE

The State Board of Accounts shall annually call a conference of clerks of the circuit courts and clerks elect to be held at such time and place as shall be fixed by the state examiner.

Each official, official elect and deputy, deputies or assistants attending any conference under this section shall be allowed, for each mile necessarily traveled in going to and returning from any such meeting by the most expeditious route, a sum for mileage at a rate determined by the county fiscal body. Each shall also be allowed under this section, an allowance for lodging for each night preceding conference attendance equal to the single room rate. However, lodging expense, in the case of one (1) day conference, shall only be allowed for persons who reside fifty (50) miles or farther from the conference location. Regardless of the duration of the conference, only one (1) mileage shall be allowed to the official, official elect, deputy or assistants furnishing the conveyance although he or she transports more than one (1) person.

The State Board of Accounts shall certify to each person, the number of days attended. Payments for mileage and lodging shall be made upon filing a verified claim, certificate attached thereto, with the auditor. Upon allowance by the board of commissioners, the auditor shall issue a warrant on the county general fund without any previous appropriation being made therefor. [IC 5-11-14-1]

LEGAL HOLIDAYS

The following are legal holidays within the state of Indiana for all purposes: New Year's Day, January 1; Martin Luther King, Jr.'s Birthday, the third Monday in January; the twelfth day of February, commonly called Lincoln's Birthday; Washington's Birthday, the third Monday in February; the movable feast day of Good Friday; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans' Day, November 11; Thanksgiving Day, the fourth Thursday in November; Christmas Day, December 25; the day of any general, national, state or city election or primary; and the first day of the week, commonly called Sunday.

When any of these holidays, other than Sunday, comes on Sunday, the following Monday shall be the legal holiday. When any of these holidays falls on a Saturday, the preceding Friday shall be observed as the legal holiday.

Any action taken by the County on any such holiday is valid for all purposes. [IC 1-1-9-1]